

University of Groningen

Essays on Autonomy, Legality and Pluralism in European law

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DOI:
[10.33612/diss.111447089](https://doi.org/10.33612/diss.111447089)

IMPORTANT NOTE: You are advised to consult the publisher's version (publisher's PDF) if you wish to cite from it. Please check the document version below.

Document Version
Publisher's PDF, also known as Version of record

Publication date:
2020

[Link to publication in University of Groningen/UMCG research database](#)

Citation for published version (APA):
Lindeboom, J. (2020). *Essays on Autonomy, Legality and Pluralism in European law*. [Thesis fully internal (DIV), University of Groningen]. University of Groningen. <https://doi.org/10.33612/diss.111447089>

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Propositions

1. The European Court of Justice is not a ‘Dworkinian Court’.
2. EU law’s claim of absolute supremacy reflects a typical characteristic of all legal systems and indicates law’s tendency to be, in the words of the late John Gardner, ‘pretentious and rife with an inflated sense of its own importance’.
3. The case law on the autonomy and supremacy of EU law is best conceptualised as internal statements about the rule of recognition of the EU legal system.
4. Scepticism about the autonomy of EU law which is based on the perspectivism of national constitutional courts is based on an unwarranted idealisation of the internal point of view.
5. National courts need not express anything more than detached statements about EU law in order to make the EU legal system alive.
6. The case law on the material scope of the fundamental freedoms of the EU internal market contains more slogans than substance.
7. The case law on the vertical, inverse vertical and horizontal direct effect of directives is internally consistent and centres on the normative impact of invoking a directive on the applicable national legal framework.
8. Scepticism about the objectivity of moral facts is naïvely self-defeating.
9. The fact that extra-legal normative reasoning in accordance with the law typically is based on appeals to inherently pluralistic sources of moral fact casts doubt on the feasibility – and desirability – of legal determinacy in constitutional adjudication.

10. The pluralism inherent to the acquisition of EU citizenship is morally valuable.
11. Theories of constitutional pluralism add nothing to analytical jurisprudence.
12. The notion of a restriction of competition by object should be conceived as an evidential presumption of the negative effects of the *type* of coordination involved; consequently, this presumption cannot be rebutted on the basis of the lack of actual effects in the specific case at hand.
13. The categorical formulation of the second sentence of paragraph 133 of *Intel v European Commission*, C-413/14 P, EU:C:2017:632, has no robust basis in either law or economics.
14. The distinction between ‘form-based’ and ‘effects-based’ approaches to EU competition law is bogus.
15. Most discussion on the ‘more economic’ approach to EU competition law is unproductively focussed on fears of type I and type II errors in individual cases, while ignoring that over- and under-inclusiveness as well as categorical analysis are inherent to any kind of rule-following.
16. The ostensible tranquillity of academic life is only appearance, for in the scholar’s mind a constant thunderstorm is raging.
17. Bruce Springsteen’s 1975 live performance of *4th of July, Asbury Park (Sandy)* at Hammersmith Odeon is an unrivalled combination of beauty and bleakness, of nostalgia and dejection, and of sincere feelings and cursory promises: ‘Oh Sandy, the aurora is rising behind us / This pier lights our carnival life forever / Love me tonight and I promise I’ll love you forever’.